

APR 25 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN RUIZ-GONZALEZ,

Defendant - Appellant.

No. 01-50727

D.C. No. CR-01-00041-VAP-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted April 7, 2003**
Pasadena, California

Before: BEEZER, FERNANDEZ, and PAEZ, Circuit Judges.

Juan Ruiz-Gonzalez challenges the constitutionality of his conviction and sentence under 8 U.S.C. § 1326(b)(2). Ruiz-Gonzalez contends that we violate

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

due process when we authorize the district court, rather than a jury, to determine that Ruiz-Gonzalez was convicted of an aggravated felony prior to re-entering the United States. *See* 8 U.S.C. § 1326(b)(2) (raising the maximum sentence from two years to 20 years where the re-entering alien was removed after conviction for an aggravated felony). The Supreme Court rejected this argument in *Almendarez-Torres v. United States*, 523 U.S. 224, 239 (1998).

Ruiz-Gonzalez argues that we are not bound by *Almendarez-Torres* because the Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428 (2002) "implicitly overruled" *Almendarez-Torres*. We are bound, however, by *Almendarez-Torres* unless and until *Almendarez-Torres* is expressly overruled by the Supreme Court. *United States v. Pacheco-Zepeda*, 234 F.3d 411, 411 (9th Cir.), *cert. denied*, 532 U.S. 966 (2001). *Ring* does not purport to expressly overrule *Almendarez-Torres*. *See* 536 U.S. at ___, 122 S. Ct. at 2437 n.4.

The judgment is **AFFIRMED**.